

**United States Department of Labor
Employees' Compensation Appeals Board**

K.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlantic City, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-0956
Issued: April 10, 2017**

Appearances:

*Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 4, 2016 appellant, through counsel, filed a timely appeal from a December 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ Appellant timely requested oral argument pursuant to section 501.5(b) of Board procedures. 20 C.F.R. § 501.5(b). By order dated June 24, 2016, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 16-0956 (issued June 24, 2016). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 505.5(b).

ISSUE

The issue is whether appellant met her burden of proof to establish a right knee injury causally related to factors of her federal employment.

On appeal counsel asserts that, based on the opinion of appellant's attending physician, her job duties as a letter carrier aggravated a prior employment-related right knee injury. He maintained that, at a minimum, a conflict in medical evidence had been created.

FACTUAL HISTORY

On June 3, 2014 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that she had no problems with her knees until she started work as a letter carrier. The employing establishment indicated that she was working light duty and was not carrying mail.

In letters dated August 26, 2014, OWCP informed appellant of the evidence needed to support her claim and asked the employing establishment to respond. In statements dated August 22, 2014, appellant related a history that she did not have knee problems before working as a letter carrier. She reported that on June 14, 2010 she fell while delivering mail, landing on her right knee and twisting her left ankle, and that on October 8, 2011 she again fell to her knees delivering mail.⁴ Appellant indicated that her right knee condition worsened beginning in 2012, and that her attending physician Dr. John C. Baker, an orthopedic surgeon, performed right knee arthroscopic surgery on May 31, 2012. She indicated that she was on Family Medical Leave Act (FMLA) for much of 2012, and that her right knee condition did not improve. Appellant continued that in January 2013 she saw Dr. Zachary D. Post who advised that she needed a knee replacement. Dr. Baker retired and appellant continued to see Dr. Post. Appellant described her job history and duties, noting that she delivered long routes that required constant stairclimbing and squatting. She reported that at present she was only performing sedentary work and that her quality of life had deteriorated due to her knee condition.

In support of her claim, appellant submitted a number of reports from Dr. Baker and his associates, dating from March 9, 2010, when the physician reported a history that appellant fell on ice in the employing establishment parking lot and diagnosed left ankle sprain and contusion to the right knee. On June 14, 2010 Dr. Baker reported that appellant fell again that day while delivering mail. He again diagnosed left ankle sprain and right knee contusion. On July 7, 2010 Dr. Baker reported that the conditions had resolved and appellant could return to full duty without restrictions.

Beginning on March 31, 2011 appellant was seen by Dr. Joseph S. Harhay, an orthopedic surgeon and associate of Dr. Baker. Dr. Harhay noted appellant's report of left knee and right

⁴ The record indicates that the June 14, 2010 injury was adjudicated under OWCP File No. xxxxxx562 as a short form closure. The October 8, 2011 injury, adjudicated under File No. xxxxxx842, was accepted for right ankle sprain. Appellant had two additional injuries, including a February 11, 2010 injury, adjudicated under File No. xxxxxx977, accepted for left ankle sprain, and a January 15, 2014 injury, adjudicated under File No. xxxxxx795. The instant case was adjudicated under File No. xxxxxx008. Only File No. xxxxxx008 is before the Board on the present appeal.

hip pain since May 2010 and diagnosed left knee patellofemoral tracking disorder with developing arthritis and hip impingement. On October 20, 2011 Dr. Harhay noted that on October 8, 2011 appellant fell while delivering mail. He diagnosed right ankle sprain. On November 29, 2011 Dr. Harhay reported that appellant's ankle was improving and that she could continue working full duty.

On April 6, 2012 Dr. Baker reported that appellant had a new problem of intermittent, throbbing right knee pain. Following examination, he diagnosed primary localized osteoarthritis of the lower leg and recommended a magnetic resonance imaging (MRI) scan. An April 26, 2012 right knee MRI scan showed tiny joint effusion, tiny intra-articular body, a tiny amount of focal deep chondral erosion, and slight fraying of the medial meniscus. Dr. Baker performed right knee arthroscopic chondroplasty and drilling on May 31, 2012. Postoperative diagnosis was grade 4 chondromalacia of the medial femoral condyle. Dr. Baker provided postoperative care noting effusion and pain. A December 4, 2012 MRI scan of the right knee demonstrated bone marrow edema and cystic change most likely related to cartilage loss; fracture could be considered. An October 21, 2013 right knee MRI scan showed new truncation of the free edge of the body of the medial meniscus, progression of osteoarthritis at the medial compartment, new small subchondral fracture of the medial femoral condyle, and a medium-sized ruptured Baker's cyst.

Dr. Baker continued to follow appellant. On March 4, 2014 he noted symptoms of right knee stiffness and decreased range of motion with pain when walking and an occasional give-way sensation. An April 6, 2014 MRI scan study demonstrated medial meniscal fraying and osteoarthritis with mild fraying in the lateral meniscal horn and focal delamination in the patellar cartilage. On April 8, 2014 Dr. Baker noted the MRI scan findings and appellant's continued complaints. He reported that he was retiring.

In a report dated September 15, 2014, Dr. Baker indicated that he first saw appellant on June 14, 2010. He described her medical care, noting the May 31, 2012 surgery. Dr. Baker opined that the chondral lesion seen on surgery was very consistent with trauma, noting that appellant continued to have complaints with swelling and tenderness over the medial joint line. He noted that, after the December 2012 MRI scan, surgery was discussed, and that throughout 2013 appellant continued to have pain, with arthritis changes demonstrated on x-ray, and confirmed by the October 2013 MRI scan. Dr. Baker advised that appellant's complaints continued until he last saw her on April 8, 2014. He opined that, within a reasonable degree of probability and certainty, appellant's right knee condition was caused by a work-related injury when she fell on her knees. Dr. Baker maintained that, over time, the direct trauma and injury to the articular cartilage progressed and became worse, and obviously became more symptomatic. He further noted that appellant's job duties such as lifting heavy bags, walking constantly for hours on end every day, up and down steps, pivoting, bending, and squatting, for someone like appellant who had a chondral lesion or chondral fracture, which occurred when she fell at work, would, in all probability, make the knee condition progress over time. Dr. Baker concluded that a unilateral hemiarthroplasty knee replacement was the only option to resolve her continued complaints, and this would allow her to continue to work, opining that without the procedure,

with a reasonable degree of medical certainty, her degenerative arthritis in the right knee would continue to progress.⁵

By decision dated October 30, 2014, OWCP denied the claim. It found that the medical evidence of record was insufficient to establish that the claimed medical condition was caused by work events.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. In a January 27, 2015 decision, an OWCP hearing representative set aside the October 30, 2014 decision. She found that, based on her review of the record, the case should be remanded for referral for a second opinion evaluation regarding whether appellant's right knee condition was due to factors of her federal employment.

On remand OWCP prepared a statement of accepted facts and referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion examination. In a February 27, 2015 report, Dr. Askin noted appellant's complaint of a painful right knee that limited her activity. He described that appellant claimed her right knee problems began on June 14, 2010. Following his review of the medical record, including the May 31, 2012 operative report and statement of accepted facts, Dr. Askin surmised that appellant's presentation was consistent with a diagnosis of degenerative joint disease of both knees. Examination of the right knee demonstrated effusion, tenderness in the medial aspect, and no ligamentous laxity, with normal patellofemoral tracking. In answer to specific OWCP questions, Dr. Askin opined that appellant's right knee condition was not causally related to employment, advising that she had arthritic changes that would progress over time. He noted that appellant had arthritic changes in both knees and that, while she might have discomfort walking at work, work activities were not a cause of her condition. Dr. Askin recommended weight loss and did not recommend a knee replacement. In an attached work capacity evaluation (Form 5c), he advised that appellant could work eight hours a day, again noting that she had knee arthritis, unrelated to work.

OWCP forwarded a letter carrier job description to Dr. Askin and asked whether appellant's right knee condition was caused, aggravated, or exacerbated by her job duties. In a supplemental report dated April 2, 2013, Dr. Askin noted his review of the job description. He advised that, although someone with knee arthritis would have pain, this would occur whether at home or at work and, therefore, he did not feel that her right knee arthritis was caused, aggravated, or exacerbated by her work duties.

In an April 20, 2015 decision, OWCP found the weight of the medical evidence rested with the opinion of Dr. Askin and denied appellant's occupational disease right knee claim.

Appellant, through counsel, timely requested a hearing, that was held on September 11, 2015. Appellant was not present at the hearing. Counsel asserted that Dr. Baker provided a clear explanation of how appellant's work injuries and job duties aggravated her right knee condition such that the April 20, 2015 decision should be reversed, or, at a minimum, a conflict in medical opinion evidence should be found.

⁵ Appellant also submitted a number of unsigned, unidentified treatment notes dated June 17, 2009 to March 31, 2011.

By decision dated December 1, 2015, an OWCP hearing representative affirmed the April 20, 2015 decision finding that the weight of the medical evidence rested with Dr. Askin.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, and that the claim was timely filed within the applicable time limitation period of FECA.⁶ When an employee claims that he or she sustained an injury in the performance of duty,⁷ he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.⁸ The employee must also establish that such event, incident, or exposure caused an injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”¹¹ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹³ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁴ Neither the mere fact that a disease or condition manifests itself during a period

⁶ 5 U.S.C. § 8101(1); *L.M.*, Docket No. 16-0143 (issued February 19, 2016); *B.B.*, 59 ECAB 234 (2007).

⁷ *Id.* at § 8102(a).

⁸ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁹ *Id.*

¹⁰ *R.H.*, 59 ECAB 382 (2008).

¹¹ 20 C.F.R. § 10.5(ee).

¹² *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁵

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a right knee injury causally related to factors of employment.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.¹⁶

The MRI scans dated April 26, 2012 to April 6, 2014 did not provide a cause of any diagnosed conditions, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Likewise, Dr. Harhay merely discussed appellant's left knee, right hip, and right ankle conditions and provided no opinion regarding her right knee.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁸

Appellant's physician, Dr. Baker submitted a number of reports describing appellant's right knee condition dating from March 9, 2010 when he reported that she fell at work and diagnosed left ankle sprain and right knee contusion. On June 14, 2010 he reported that she fell again that day while delivering mail, and again injured her left ankle and right knee. On July 7, 2010 Dr. Baker reported that the conditions had resolved and appellant could return to full duty without restrictions. The record indicates that appellant has a February 11, 2010 injury accepted for left ankle sprain and a June 11, 2010 short form closure claim.¹⁹ It was not until April 6, 2012, 21 months after his July 7, 2010 report, that Dr. Baker reported "a new problem" with appellant's right knee and diagnosed primary localized osteoarthritis and performed arthroscopic surgery on May 31, 2012. He did not offer an opinion on causal relationship until July 15, 2014 when he maintained that the chondral lesion seen on surgery was very consistent with trauma, noting that appellant continued to have complaints of swelling and tenderness. Dr. Baker did not explain the absence of symptoms between July 2010 and April 2012. To establish that a claimed condition was caused by the accepted injury, medical evidence of

¹⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁶ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹⁷ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁸ *A.D.*, 58 ECAB 149 (2006).

¹⁹ *Supra* note 4.

bridging symptoms between the present condition and, as in this case, the accepted injury must support the physician's conclusion of a causal relationship.²⁰

While Dr. Baker further explained that appellant's letter carrier duties would, in all probability, worsen her knee condition over time, he did not adequately explain or describe physiologically how or why either of the 2010 employment injuries or appellant's work duties as a letter carrier caused her current right knee condition. His opinion is, therefore, of diminished probative value.²¹

Following his review of the medical record and performing physical examination, in reports dated February 27 and April 2, 2013 Dr. Askin clearly explained that appellant's presentation was consistent with a diagnosis of degenerative joint disease of both knees. Examination of the right knee demonstrated effusion, tenderness in the medial aspect, and no ligamentous laxity, with normal patellofemoral tracking. In answer to specific OWCP questions, Dr. Askin opined that appellant's right knee condition was not causally related to employment. He explained that appellant's arthritic changes would have progressed over time, no matter what she was doing, whether at home or at work. He concluded that appellant's right knee arthritis was not caused, aggravated, or exacerbated by her work duties, and advised that appellant could work eight hours a day.

The Board therefore finds that OWCP properly accorded the weight of the medical evidence to Dr. Askin.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a right knee condition causally related to factors of her federal employment.

²⁰ *Mary A. Ceglia*, 55 ECAB 626 (2004).

²¹ *See M.L.*, Docket No. 14-1128 (issued September 17, 2014).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board